No. 72

In the Supreme Court of the United States

OCTOBER TERM, 1956

JOHN M. LEHMANN, OFFICER IN CHARGE, PETITIONER

v.

UNITED STATES OF AMERICA, EX REL. BRUNO CARSON OR BRUNO CARASANTTI

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 23–31) is reported at 228 F. 2d 142. The memorandum opinion of the District Court (R. 10–11) is unreported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 17, 1955 (R. 23). A timely petition for rehearing was denied on January 30, 1956 (R. 32). The petition for a writ of certiorari was

[1] John M. Lehmann, Officer in Charge of the Cleveland office of the Immigration and Naturalization Service, was substituted as a party for J. S. Kershner on February 16, 1956 (R. 32).

filed on April 27, 1956, and was granted on November 19, 1956 (R. 32). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether an alien, who entered the United States as a stowaway and committed two crimes prior to the Immigration and Nationality Act of 1952 but was not deportable therefor prior to that Act, has a protected "status" of nondeportability under the general savings clause of the Act, Section 405 (a), despite the provisions of Section 241 which make specified acts (including those committed by respondent) grounds for deportation and which expressly make these grounds retroactive "[e]xcept as otherwise specifically provided in this section."

STATUTES INVOLVED

1. The Immigration and Nationality Act of 1952 provides:

> SEC. 241 [66 Stat. 204; 8 U. S. C. 1251]—
>
> (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—
>
> (1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;
>
> * * * * *
>
> (4) * * * at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;
>
> * * * * *

(b) The provisions of subsection (a) (4) respecting the deportation of an alien convicted of a crime or crimes shall not apply (1) in the case of any alien who has subsequent to such conviction been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States * * *.

* * * * *

(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.

* * * * *

SEC. 405 [66 Stat. 280, 8 U. S. C. 1101 note]—

(a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act

> shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

2. The Immigration Act of February 5, 1917, 39 Stat. 874, provided:

> SEC. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * * *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, * * *.

STATEMENT

Respondent was found deportable on two grounds: under Section 241 (a) (1) of the Immigration and Nationality Act of 1952 (*supra*, p. 2) as an alien who, at the time of entry, was excludable by the law existing at the time of entry (*i. e.*, a stowaway under Section 3 of the Immigration Act of February 5, 1917) (R. 12); and under Section 241 (a) (4) of the 1952 Act (*supra*, p. 2) as an alien who has been convicted of two crimes involving moral turpitude (R. 13–16).

The relevant facts may be summarized as follows: Respondent, a native and citizen of Italy, entered the United States in 1919 as a stowaway (R. 13). The pertinent law then in effect was Section 19 of the Immigration Act of February 5, 1917, 39 Stat. 889, which provided (*supra*, p. 4):

> That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. * * *

Respondent was not deported within the five-year period after entry (R. 14).[2]

On January 15, 1936, respondent was convicted in the Common Pleas Court, Cuyahoga County, Ohio, of the crime of blackmail committed on or about December 11, 1935 (R. 13). He was also convicted on April 25, 1936, in the Common Pleas Court, Lorain County, Ohio, of the crime of blackmail on or about October 15, 1935 (R. 13). Deportation proceedings were instituted against respondent based upon these two convictions, but in 1945 the Governor of Ohio granted respondent a pardon for the second of the two convictions, conditioned as follows: "from this time forward, conditioned upon good behavior and conduct and provided that he demeans himself

[2] Section 14 of the Immigration Act of May 26, 1924, 43 Stat. 162, made an alien, entering illegally, deportable at any time, but was not retroactive. It therefore did not affect respondent.

as a law abiding person and is not convicted of any other crime, otherwise this Pardon to become null and void" (R. 22A). At that time (R. 16), the pardon was considered sufficient by immigration officials to bar deportation under the law then in effect, Section 19 of the Immigration Act of 1917 (*supra*, p. 4), and the order of deportation was withdrawn (R. 13–14).

The instant warrant of arrest was served on respondent on June 24, 1953 (R. 20–21). After a hearing (R. 6), he was ordered deported by a Special Inquiry Officer (R. 6). The order of deportation was affirmed in a memorandum opinion of the Board of Immigration Appeals on January 19, 1954 (R. 12–20), which specifically considered the question of whether deportation of respondent was precluded by the savings clause of the 1952 Act, Section 405 (a) (*supra*, pp. 3–4), and decided the question adversely to respondent (R. 18–19).

Respondent then filed a petition for a writ of habeas corpus, seeking to rely, *inter alia*, upon the fact that under the former enactment he could not have been deported as a stowaway after five years, and upon the conditional pardon as to one of the crimes (R. 3–4). The District Court, relying upon the reasons stated and authorities cited in the memorandum opinion of the Board of Immigration Appeals, denied the petition (R. 10–11).[3]

[3] Contrary to his decision in this case, the same district judge subsequently held in *United States ex rel. Sciria* v. *Lehmann*, 136 F. Supp. 458 (N. D. Ohio), that an alien entering as a stowaway before 1924 acquired a status of nondeportability after five years, and that the status was preserved by the savings clause of the 1952 Act. This case is on appeal in the Sixth Circuit.

The Court of Appeals reversed, holding that as to both charges respondent had a "status of nondeportability" under the savings clause of the 1952 Act, and that the retroactive language of Section 241 (d) (*supra*, p. 3) was not a clear manifestation of intent to withdraw the protection of the savings clause (R. 27, 29).

SUMMARY OF ARGUMENT

Section 241 (d) of the Immigration and Nationality Act of 1952 provides that the grounds for deportation in Section 241 (a) are to be applicable notwithstanding that the entry of the alien and the facts specified as grounds for deportation occurred prior to the enactment of the 1952 Act. The Government's basic argument—that the language and the legislative history of the statute show that this provision renders the general savings clause of the 1952 Act inoperative here, because Section 241 (d) is a clause which *does* "otherwise specifically provide * * *," to take deportation out of the general savings clause—is developed in the brief for the Government in the companion case, *Mulcahey* v. *Catalanotte*, this Term, No. 435. The present brief concentrates on the particular bases of deportation applicable to respondent: the entry as a stowaway without having been deported in the five-year period provided in the 1917 Act; and the conviction of two crimes, as to one of which respondent had received a conditional pardon.

I

A. The clauses of Section 241 on which respondent's deportation rests—Section 241 (a) (1), relating to entry as a stowaway, and 241 (a) (4) and 241 (b), relating to conviction for crime and the effect of a pardon—use such phraseology as "at the time of entry" and "at any time after entry." This language is itself an indication of the congressional intent that the grounds there stated shall relate back to the time of the specified acts, and not to the time of the enactment of the statute. This intention is made crystal clear by the language of Section 241 (d). The general savings clause therefore has no application, since, as to these deportation grounds, Congress has "otherwise specifically provided."

B. The legislative history shows that Congress was made fully aware that the statute, in its present form, would have the effect of subjecting to deportation persons whose deportation had been barred under the prior five-year period of limitations or on the basis of conditional pardons no longer recognized under the new Act. The congressional decision to use the present phraseology thus represents the knowing exercise of legislative judgment to render such persons deportable.

II

Aside from the overriding effect of Section 241 (d), respondent had no "status," as that term is used in the general savings clause, to which that clause could apply. The mere failure of Congress prior to 1952 to subject aliens in respondent's circumstances to deportation cannot be construed as a general amnesty for prior misconduct or as an award of any other type of special status.

A statute of limitations does not convert an unlawful residence into a lawful one, and the running of a statute does not confer vested rights. Hence the prior statute of limitations on stowaways gave respondent no status of nondeportability. Similarly, the fact that a conditional pardon previously precluded deportation as to one offense does not mean that respondent was forever immune from deportability for his crimes.

The term "status" or "right in process of acquisition" as used in the savings clause was intended to relate to such affirmative grants as the right to naturalization or the right to derivative citizenship. No such affirmative grant is involved here.

ARGUMENT

We discuss in our brief in the companion case of *Mulcahey* v. *Catalanotte*, No. 435, the general considerations which we think clearly show that the general savings clause of the 1952 Act, Section 405 (a), by its own terms (*i. e.*, "unless otherwise specifically provided" in the Act) cannot apply to the grounds of deportation set forth in Section 241 of the Act because Section 241 (d) is a clause which does otherwise specifically provide. Section 241 (d) states that "[e]xcept as otherwise specifically provided *in this section*" (emphasis added) the bases of deportation set forth in that *section* shall apply notwithstanding the fact that the acts giving rise to deportation occurred prior to the enactment of the 1952 Act. This language clearly expresses the congressional purpose to make the grounds for deportation in the new Act retrospective in operation (except

where otherwise provided in Section 241), and therefore to render the general savings clause inoperative as to the grounds for deportation. And we also show in our brief in No. 435 that the congressional purpose, so clear from the language of Section 241 (d), is confirmed by the general legislative history of the statute.

In this brief, therefore, we concentrate on the particular bases of deportation here involved: the entry as a stowaway without having been deported in the five-year period fixed by the 1917 Act; and the conviction of two crimes, as to one of which respondent received a conditional pardon which barred deportation prior to the 1952 Act. We show that the same considerations apply in this case as in No. 435, and that the legislative history on these problems is further evidence of the congressional intent to apply the 1952 Act to prior offenders. We show also that respondent had, in any event, no "status" of nondeportability which could be saved under the savings clause.

I

AN ALIEN WHO ENTERED THE UNITED STATES ILLEGALLY AS A STOWAWAY AND WHO WAS CONVICTD OF TWO CRIMES INVOLVING MORAL TURPITUDE PRIOR TO ENACTMENT OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 IS DEPORTABLE UNDER THAT ACT

A. The statutory language shows clear congressional purpose to apply the specified grounds of deportation to conduct occurring prior to the 1952 Act

The Immigration and Nationality Act of 1952 (*supra*, pp. 2–3) provides that any alien shall be deported who—

> *at the time of entry* was within one or more of the classes of aliens excludable by the law existing at the time of such entry [Sec. 241 (a) (1); emphasis added];

or who—

> *at any time* after entry is convicted of two crimes involving moral turpitude [Sec. 241 (a) (4); emphasis added]

unless he has been granted "a full and unconditional pardon" (Section 241 (b)).

The italicized language is itself an indication of the congressional purpose that the grounds of deportation specified in the above provisions were intended to relate back to the time of the entry of the alien, and not to the time of the enactment of the statute. But any possible doubts of the congressional intent are set at rest by the language of Section 241 (d) which states:

> (d) Except as otherwise specifically provided *in this section*, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act. [Emphasis added.]

As is discussed in more detail in our brief in No. 435, this is clearly a clause which *does* "otherwise specifically provide * * *" so as to take Section 241 out of the general savings clause. The fact that Section 241 (d) is to apply except as otherwise provided in

the *section* (not the *Act*), coupled with the fact that the section does otherwise provide by the simple use of the word "hereafter" as to some matters, is further evidence that Section 241 alone governs issues of retroactivity with relation to deportation. The decisions discussed in our brief in No. 435, pp. 12–13, 15–16, show that no particular phrasing, no magic formula, is necessary to take a particular section out of the savings clause. *Shomberg* v. *United States,* 348 U. S. 540. Moreover, in *Marcello* v. *Bonds,* 349 U. S. 302, this Court at least assumed the retrospective effect of Section 241 (d) in holding, after an argument with respect to the savings clause had been made to it, that Section 241, when applied retrospectively to a pre-1952 narcotics offense, did not constitute a constitutionally prohibited *ex post facto* law. And lower federal courts have recognized Section 241 (d) as a clause specifically intended to give retrospective effect to grounds for deportation set forth in Section 241. See, *e. g., Pino* v. *Nicolls,* 215 F. 2d 237, 246 (C. A. 1), reversed on other grounds, *sub nom. Marcello* v. *Bonds,* 349 U. S. 302.

B. *The legislative history relating to stowaways and former convictions confirms the congressional purpose to apply the specific grounds of deportation to conduct occurring prior to the 1952 Act*

We have discussed in our brief in No. 435 the general legislative history which confirms the congressional intent, apparent from the language of the statute, that (except in a few instances clearly indicated by the language) the grounds for deportation set forth in Section 241 shall apply to conduct occurring prior to the 1952 Act. Here we show, with rela-

tion to the problems involved in this case, and particularly with relation to stowaways who under the 1917 Act could be deported only within five years after entry, that the retrospective nature of the 1952 enactment was plainly called to the attention of Congress, and that the decision of Congress to keep the present language can be interpreted only as a deliberate congressional determination of policy.

1. With respect to stowaways, Congress evidenced a sharp hostility, as well as an acute awareness of the need for a new approach to the continuing problem. The elimination of the previous five-year restriction on the deportation of stowaways does not stand alone but is consistent with other language of the reports contemplating the elimination of the former discretionary power to admit stowaways (S. Rep. No. 1137, 82d Cong., 2d Sess., 10), the elimination of some of the procedure formerly protecting stowaways (*id.*, 27), and the stiffening of requirements for administrative relief. The Senate committee stated (*id.*, 25):

> * * * The committee is aware, too, of the progressively increasing number of cases in which aliens are deliberately flouting our immigration laws by the processes of gaining admission into the United States illegally * * * with the intention of establishing themselves in a situation in which they may subsequently have access to some administrative remedy to adjust their status to that of permanent residents. This practice is grossly unfair to aliens who await their turn on the quota waiting lists and who are deprived of their quota

> numbers in favor of aliens who indulge in the practice. This practice is threatening our entire immigration system and the incentive for the practice must be removed. * * *

Earlier, the basic congressional study of the immigration laws, S. Rep. No. 1515, 81st Cong., 2d Sess., had recommended (p. 389):

> Under section 19 of the 1917 act, any alien who, at the time of entry, was a member of one or more of the classes of aliens excluded from admission to the United States may be deported at any time within 5 years after entry. It is the recommendation of the subcommittee that the time limitation on their deportation after entry should be eliminated. If the cause for exclusion existed at the time of entry, it is believed that *such aliens are just as undesirable at any subsequent time as they are within the 5 years after entry.* [Emphasis added.]

The committees of both the Senate and House acknowledged consideration of analyses of drafts of the Act (S. 3455, 81st Cong., 2d Sess., and S. 716, 82d Cong., 1st Sess.) by the Immigration and Naturalization Service (S. Rep. No. 1137, 82d Cong., 2d Sess., 3; H. Rep. No. 1365, 82d Cong., 2d Sess., 27–28).* In discussing Section 241 (a) (1), applicable to stowaways, the analysis of S. 716 states, "It will be noted that no statute of limitations is applicable to any ground of deportation under section 241 [(a) (1)]" (p. 241–1). This must be read in connection

* Copies of these analyses have been lodged with the Librarian of this Court for use in connection with this case and *Mulcahey* v. *Catalanotte* (this Term, No. 435).

with the general comment on what is now 241 (d) (pp. 241–15, 16), namely:

> This subsection makes aliens who fall within any of the classes enumerated in subsections (a) or (c) deportable without regard to the fact that the alien entered the United States before the enactment of this Act or that the facts which make him deportable occurred before that time. *This of course gives retroactive effect to the deportation provisions of this bill.* * * * [Emphasis added.]

It is thus evident that Congress was informed that the stowaway provision as written would be retrospective.

This conclusion is supported by the adoption of specific limitation provisions dealing with other matters. The conference report (H. Rep. No. 2096, 82d Cong., 2d Sess., 129) stated:

> In conforming the language of both House and Senate versions regarding grounds for deportation of aliens the conferees have provided for a statute of limitations (as contained in the House version) in accord with humanitarian principles, particularly in the cases of aliens where deportation would be based on mental disease or on economic distress. * * *

As finally enacted, the Act provided a statute of limitations for mental disease (241 (a) (3)) and economic distress (241 (a) (8)), but not for stowaways (241 (a) (1)). The omission to do so cannot be viewed as other than knowing.[5]

[5] Subsequent comment has reinforced the foregoing indications of the intent and action of the Congress to save none of the former limitations except as specifically enacted. The 1953 report of

In addition, various objections and attempts at amendment put Congress on notice that the proposed Act would not save the former period of limitation as to stowaways, either specifically or by the effect of some general savings clause. For example, in Part 2 of S. Rep. No. 1137, 82d Cong., 2d Sess., the minority of the Senate committee stated (p. 10):

> * * * [S]ection 241, as it presently stands, would make any alien who failed to conform to all applicable laws when he entered the United States, no matter how innocently, forever deportable. * * *

Similarly, the veto message of the President complained that (H. Doc. No. 520, 82d Cong., 2d Sess., 6):

> * * * Defects and mistakes in admission would serve to deport at any time because of the bill's elimination, *retroactively as well as prospectively*, of the present humane provision *barring deportations on such grounds 5 years after entry.* * * * [Emphasis added.]

Nevertheless, in overriding the veto, Congress made no further amendments.

2. In dealing with the second aspect of the decision below, the two-fold conviction of respondent

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the President's Commission on Immigration and Nationality, *Whom We Shall Welcome*, at page 198, recognized the change:

"[T]he 1952 statute retroactively rescinded the limited statute of limitations fixed by previous law. An alien who entered the United States 25 years ago, and whose entry involved a purely technical violation, enjoyed immunity from deportation for the last 20 years. Under the 1952 Act, he is now again subject to deportation. * * *"

for offenses involving moral turpitude, as to one of which a *conditional* pardon had been granted prior to enactment of the Act, it is first noteworthy that Section 241 (b) of the Act now specifically requires a "full and unconditional pardon" in order to preclude deportation, as to any particular offense. The general purpose revealed by the legislative history, to have all except specified grounds of deportation made retrospective, is applicable here as well. See *supra*, pp. 10–12.

Specifically, the Immigration Service's analysis of S. 716 (see *supra*, p. 14), in discussing Section 241 (b), relating to pardoned offenses, states in pertinent part (pp. 241–12, 13):

> This subsection differs in several respects from the present provisions in section 19 (a). It will limit the pardons which can be effective in preventing deportation to those granted by the President or any Governor. A legislative pardon will no longer be effective. The statute states specifically that the pardon must be full and unconditional. The changed language also removes any possible doubt that foreign pardons are not to be effective in preventing deportation.

This comment, too, must be considered with the comment (quoted *supra*, p. 15), on the retrospective effect of other principal grounds of deportation. Here too, therefore, Congress was put on notice that former deportation defenses (except where expressly continued in Section 241) would no longer be effective under the new Act.

Moreover, Section 19 of the Act of February 5, 1917, 39 Stat. 874, 889, 8 U. S. C. (1946 ed.) 155 (a), the predecessor of the present Section 241 (a) (4), had provided for the deportation of any alien "who is *hereafter* sentenced more than once" (emphasis added). The fact that in 1952 Congress dropped the word "hereafter" demonstrates its specific purpose to apply Section 241 to antecedent convictions as well as convictions subsequent to the Act. Underlying this purpose was undoubtedly the desire on the part of many in Congress to facilitate the deportation of alien criminals. See H. Rep. No. 1365, 82d Cong., 2d Sess., 28 (House Committee on the Judiciary); S. Rep. No. 307, 82d Cong., 1st Sess., 15 (Special Senate Committee to Investigate Organized Crime in Interstate Commerce). See also *Pino* v. *Nicolls,* 215 F. 2d 237, 246 (C. A. 1), reversed on other grounds, *sub. nom. Marcello* v. *Bonds,* 349 U. S. 302 (holding that Section 241 (a) (4) was intended to have retrospective application).

In sum, even apart from the face of the Act, its legislative history shows that Congress, with full knowledge of the implications of its action, adopted new legislation having the effect of rendering subject to deportation aliens in respondent's circumstances, notwithstanding the fact that such aliens had not been deportable under prior legislation. Conversely, there is nothing in the legislative history to show that Congress, by means of the savings clause, sought to erect an absolute bar to deportation of such aliens for their prior conduct.

II

RESPONDENT HAD NO "STATUS" OF NONDEPORTABILITY WHICH WOULD BE PRESERVED UNDER THE SAVINGS CLAUSE OF THE 1952 ACT

In No. 435, this Term, we argue that, quite aside from the overriding effect of Section 241 (d), mere inaction by Congress in failing earlier to make a narcotics conviction a separate ground for deportation did not result in any "status" which would be preserved by the general savings clause. We do not here reargue the general principles there discussed.

The facts of this case present somewhat more of a basis for the position that respondent had a status of nondeportability since, as to each of the two matters for which he is now being deported, his former nondeportability resulted from the happening of a certain event which under the earlier legislation precluded deportation for the matter in question (*i. e.*, running of the five-year period as to the entry as a stowaway, and the conditional pardon as to one of the two crimes). Nevertheless, we do not believe that, even in this context, nondeportability can be said to be a status as that term is used in the savings clause.

It is true of the facts here, as it is of mere nonaction, that Congress has never accorded or offered an affirmative privilege, such as a general amnesty, with respect to illegal entry or criminal offenses. This Court has repeatedly held that the alien derives nothing from the fact that Congress has not heretofore chosen to attach the consequence of deportability to the alien's particular offenses or conduct; Congress can act, and act retrospectively, at a later time.

Galvan v. *Press*, 347 U. S. 522, 531; *Harisiades* v. *Shaughnessy*, 342 U. S. 580, 595; *Eichenlaub* v. *Shaughnessy*, 338 U. S. 521, 529; *Mahler* v. *Eby*, 264 U. S. 32, 39–40; *Ng Fung Ho* v. *White*, 259 U. S. 276, 280–281; *Marcello* v. *Bonds*, 349 U. S. 302. This absence of action by the Congress cannot, as a matter of statutory language, be treated as a "status, condition, right in process of acquisition," or as an "act, thing, liability, obligation, or matter, civil or criminal."

A statute of limitation does not convert an unlawful residence into a lawful one. *United States ex rel. Stapf* v. *Corsi*, 287 U. S. 129, 133. The running of a statute of limitations does not confer vested rights. *Chase Securities Corp.* v. *Donaldson*, 325 U. S. 304, 314; *Pittsburgh Can Co.* v. *United States*, 113 F. 2d 821, 824 (C. A. 3); *United States* v. *Obermeier*, 186 F. 2d 243, 254–255 (C. A. 2), certiorari denied, 340 U. S. 951. Moreover, a change as to a matter of remedy is generally construed as immediately applicable. *Bruner* v. *United States*, 343 U. S. 112, 116–117; *Ex parte Collett*, 337 U. S. 55, 71. Hence, the fact that Congress, perhaps for administrative and practical reasons, had earlier refrained from requiring immigration authorities to pursue some illegal entries too far into the past did not affirmatively bestow a status or right upon an illegal entrant.

Similarly, the fact that the former statute was construed to be inapplicable to crimes conditionally pardoned does not mean that an alien remains nondeportable for his pre-1952 offenses when Congress specifically added language to the contrary. And while the earlier deportation proceedings against re-

spondent had been terminated upon the basis of a conditional pardon (granted after the proceedings had been instituted), the doctrine of *res judicata* does not apply even in the case of a much more specific administrative determination. *Pearson* v. *Williams*, 202 U. S. 281; *Bridges* v. *United States*, 199 F. 2d 811, 826 (C. A. 9), reversed on other grounds, 346 U. S. 209.

Nothing in the legislative history of the Act nor in the language of the savings clause indicates that any "vested right" was to be accorded by the savings clause to an alien who had entered the country illegally and had thereafter committed two crimes involving moral turpitude. As we have shown in our brief in No. 435 (pp. 21–22, 25–26), the addition of the terms "status," "condition," and "right in process of acquisition" in the savings clause was intended to resolve a conflict of decisions on a minor's derivation of citizenship through parental naturalization. The statutory defenses which barred respondent's deportation under pre-1952 legislation have no similar character as affirmative grants of a privilege.

CONCLUSION

It is therefore respectfully submitted that the judgment of the court below should be reversed.

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